

# CRIMINAL YEAR SEMINAR

April 20, 2018 - Tucson, Arizona  
May 11, 2018 - Phoenix, Arizona  
May 18, 2018 - Chandler, Arizona



## CRIMINAL RULES UPDATE

Presented By:

**THE HONORABLE JOHN E. HUDSON**

Judge of the Gilbert Municipal Court

&

**BETH BARNES**

Traffic Safety Resource Person

Assistant Phoenix City Prosecutor

Distributed By:

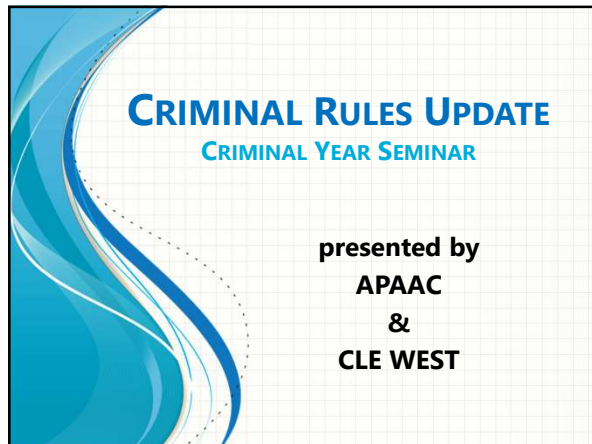
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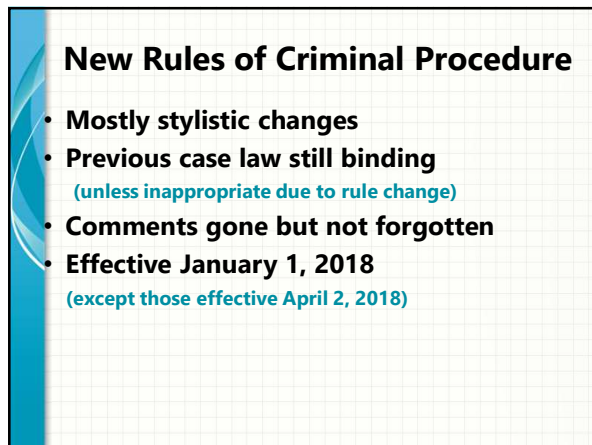
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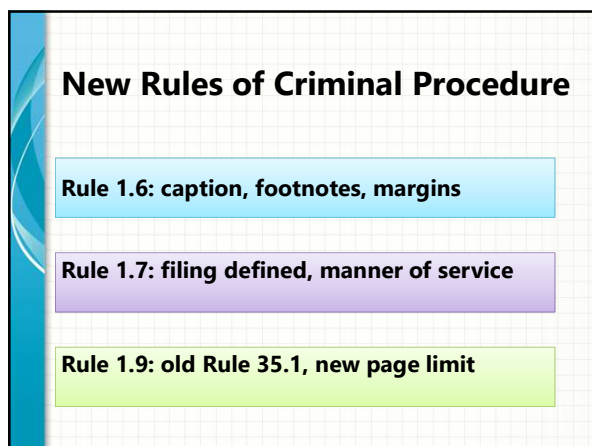
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## ***Brailsford v. Foster (State, RPI)***

### **Rule 5.3 Nature of the Preliminary Hearing**

- (a) Procedure
  - (1) Permitted Evidence
  - (3) Probable Cause Ruling
  - (4) Offer of Proof

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### ***Brailsford—facts and procedural history***

- report: rifle at hotel
- Mesa officers responded
- officer told DS to crawl
- DS was crying, begging not to be shot
- abruptly put hand behind back

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### ***Brailsford—facts and procedural history***

- Brailsford charged
- preliminary hearing: court found PC
- Brailsford made offer of proof
- wanted 4 witnesses to testify
- Court accepted offer, allowed one witness
- evidence insufficient to rebut PC

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**Issue #1**

**error to not allow all witnesses to testify?**

**Analysis**

- Rule 5.3(a)(1): only evidence relevant to PC is admissible
- Rule 5.3(a)(4): court admits defendant's evidence unless it won't rebut PC
- Most of Brailford's evidence was cumulative

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**Issue #2**

**error to not consider justification defense?**

**Analysis**

- Rule 5.3(a)(3): determine whether PC exists, not guilt or innocence
- Court must consider justification
- Conflicting evidence left for jury to resolve

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**STATE V. HILDAGO**

- Rule 6.1 Right to Counsel**
- (b) Right to Court-Appointed Attorney
  - (c) Waiver of Right to Counsel

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**New Rules of Criminal Procedure**

Rule 6.3(c)(2)(B): new grounds for withdrawal

Rule 6.7: mitigation specialists

Rule 10.2(e): waiver provision simplified

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**STATE V. HEGYI  
(RASMUSSEN, RPI)**

Rule 11.4 Disclosure of Experts' Reports  
(b) Reports of Other Experts

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**STATE V. ESCALANTE-  
OROZCO**

Rule 11.5 Hearing and Orders  
(a) Hearing

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## ***Cespedes v. Lee (State, RPI)***

### **Rule 12.9 Challenge to Grand Jury Proceedings (a) Grounds**

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## ***Cespedes—facts and procedural history***

- Cespedes spanked son with belt
- son “borrowed” Cespedes’s credit card
- son reported dad to school
- grand jury indicted Cespedes
- Cespedes used corporal punishment
- prosecutor instructed GJ on justification

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## ***Cespedes—facts and procedural history***

- Cespedes moved to dismiss and remand
- superior court: no
- COA: no
- ASC granted review

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**Issue**

denied a substantial procedural right under Rule 12.9(a) because prosecutor misstated law?

**Analysis**

- prosecutor must instruct GJ about applicable law
- includes proper justification instruction
- quality of instruction disputed
- 4-3 decision: instruction was adequate

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**STATE V. MILLIS**

Rule 13.3 Joinder  
(a) Of Offenses

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**New Rules of Criminal Procedure**

Rule 15.1(b)(4)(C) & 15.2(c)(2)(C):  
disclosure of expert summaries

Rule 15.7(c): modifies ongoing disclosure  
obligation

Rule 16.2(a): defines *suppress*

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## ***State v. Godoy (Whitney, RPI)***

**Rule 16.1 General Provisions  
(d) Finality of Pretrial Determinations**

**Rule 20 Judgment of Acquittal  
(a) Before Verdict  
(b) After Verdict**

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### ***Whitney—facts and procedural history***

- Whitney charged with child abuse
- case tried to a jury
- Whitney motion under Rule 20(a)
- the court partially granted motion
- during deliberations, two jurors resorted to self-help
- mistrial

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### ***Whitney—facts and procedural history***

- motion to reconsider under Rule 20(a)
- motion to supplement under Rule 20(b)
- court treated as motions to reconsider, largely granted
- the State sought special-action relief

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**Issue**

can court grant Rule 20 motion after mistrial?

**Analysis**

- Rule 20 allows for motion before or after verdict
- COA: trial court couldn't consider renewed Rule 20 motion
- trial court already ruled on Rule 20(a) motion

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**Analysis**

- court could only consider renewed motion under Rule 20(b)
- mistrial, so no verdict and no Rule 20(b)

Whitney: Rule 16.1(d)!

- Rule 16.1(a): applies pretrial
- Rule 20 motion cannot be renewed under Rule 16.1(d)
- Rule 20(b) itself establishes when motion can be renewed

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**STATE V. HILDAGO**

**Rule 16.2 Procedure on Pretrial Motions to Suppress Evidence**  
**(b) Burden of Proof on Pretrial Motions to Suppress Evidence**

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## ***State v. Smith***

### **New Rule 16.4 Dismissal of Prosecution (d) Effect of Dismissal**

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### ***Smith*—facts and procedural history**

- child molestation and sexual conduct with an 8-year-old girl
- first trial: mistrial
- second trial: jury deadlocked
- before third trial: motion to dismiss
- after third trial, guilty verdict

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### **Issue**

should the trial court have dismissed with prejudice?

### **Analysis**

- in this situation, trial court balances competing interests
- Rule 16.4(d): dismissal without prejudice unless justice requires otherwise

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### Analysis

- **Smith's interests**
  - State's witness caused first mistrial
  - second trial was hung jury
  - considerable emotional and financial stress
- **State's interests**
  - mistrial happened early in first trial
  - only second trial resulted in hung jury
  - Smith's crimes were serious, harm great

State's interests > Smith's

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### New Rules of Criminal Procedure

Rule 17.4(g): change of judge during plea

Rule 17.7: submissions

Rule 19.3(e): jury instruction—no self-help!

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### STATE V. ESCALANTE-OROZCO

Rule 18.1 Trial by Jury  
(a) By Jury

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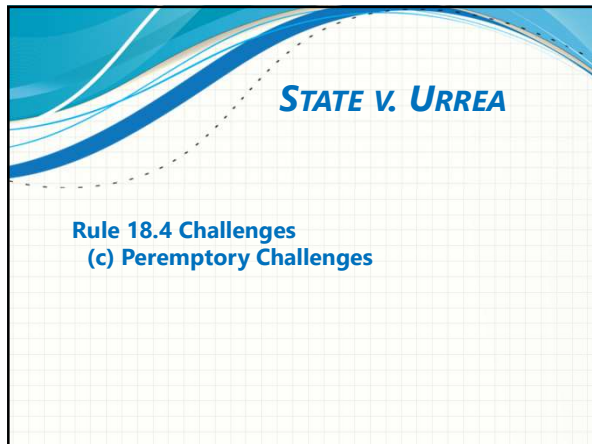
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**STATE V. URREA**

**Rule 18.4 Challenges**  
**(c) Peremptory Challenges**

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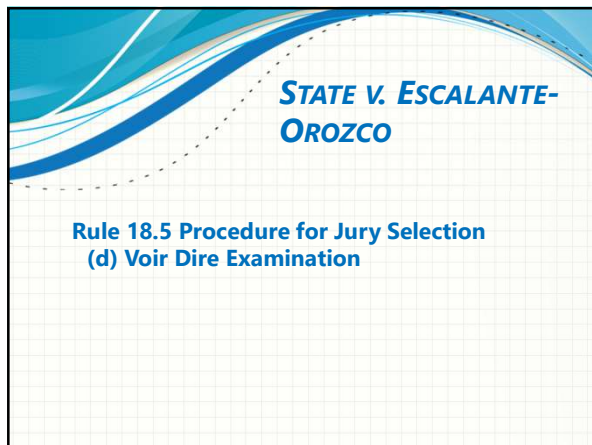
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**STATE V. ESCALANTE-OROZCO**

**Rule 18.5 Procedure for Jury Selection**  
**(d) Voir Dire Examination**

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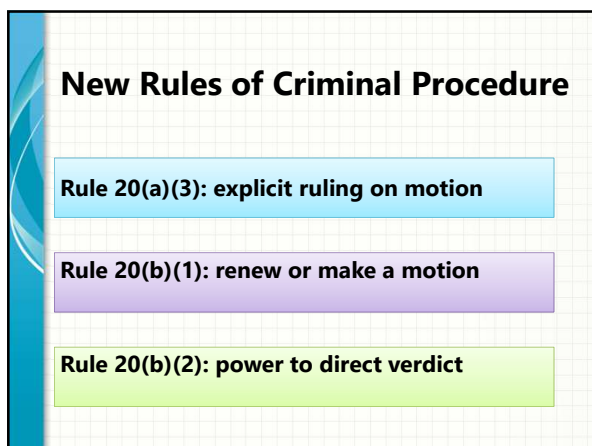
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**New Rules of Criminal Procedure**

**Rule 20(a)(3): explicit ruling on motion**

**Rule 20(b)(1): renew or make a motion**

**Rule 20(b)(2): power to direct verdict**

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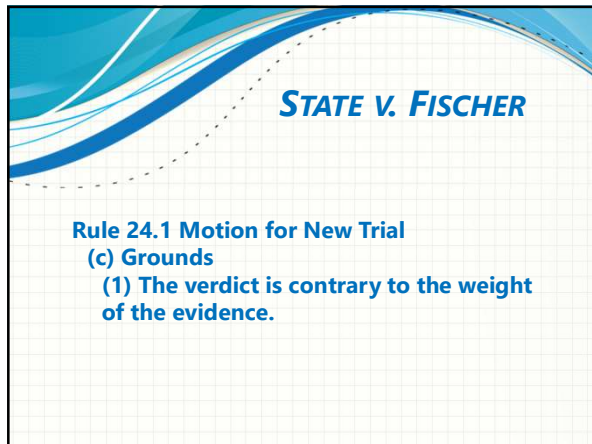
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**STATE V. FISCHER**

Rule 24.1 Motion for New Trial  
(c) Grounds  
(1) The verdict is contrary to the weight of the evidence.

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**STATE V. ESCALANTE-OROZCO**

Rule 24.1 Motion for New Trial  
(c) Grounds  
(2) The State is guilty of misconduct.

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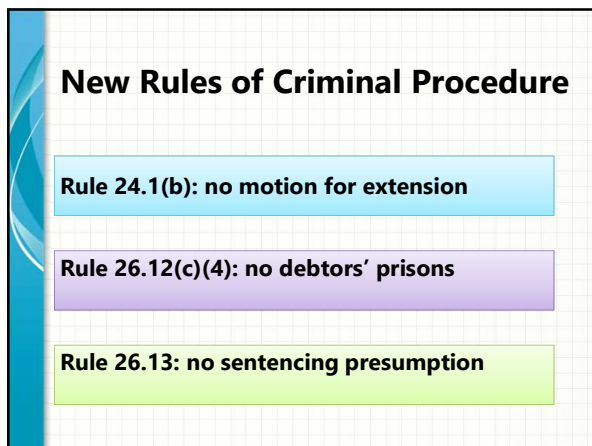
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**New Rules of Criminal Procedure**

Rule 24.1(b): no motion for extension

Rule 26.12(c)(4): no debtors' prisons

Rule 26.13: no sentencing presumption

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## ***State v. Grijalva***

### **Rule 26.1 Definitions; Scope**

- (b) Judgment
- (c) Sentence

### **Rule 26.10 Pronouncing Judgment and Sentence**

- (b) Sentence

### **Rule 26.16 Entry of Judgment and Sentence**

- (a) Entry of Judgment and Sentence

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## ***Grijalva—facts and procedural history***

- pleaded to theft of a means of transportation
- restitution totaling \$3,000.
- court suggested stip., *retained jurisdiction*
- 18 months later, State sought restitution
- court ordered Grijalva to pay
- Grijalva objected, court vacated order, reset
- two months later, court ordered Grijalva to pay

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### **Issue**

court have jurisdiction to order restitution?

### **Analysis**

- Grijalva sought to reverse under Rule 26
- Rule 26.16(a): “[t]he judgment of conviction and sentencing on the judgment are complete and valid at the time the court orally pronounces them in open court”

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### Analysis

- sentence is defined under Rule 26.1(c) as “the court’s pronouncement of the *penalty* imposed on the defendant after a judgment of guilty”
- Restitution isn’t a penalty, not listed in Rule 26.10(b)
- because trial court retained jurisdiction, it could order restitution

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### New Rules of Criminal Procedure

Rule 30: gone!

Rule 31: significantly reworked

Rule 32: task force

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### STATE V. RUSHING

- Rule 31.10 Contents of Briefs (formerly ARCrP 31.13)
- Fundamental error

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## ***State v. Leyva***

### **Rule 32.1 Scope of Remedy (a) Grounds for Relief**

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### ***Leyva—facts and procedural history***

- Leyva, mother, sister, attorney discussed State's plea offer
- Leyva later moved to withdraw
- asserted mother, sister, attorney pressured him to plea
- claimed he immediately regretted plea

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### **Analysis**

- grounds for relief under Rule 32.1(a) limited
- can't contest ruling of a motion to withdraw
- can challenge voluntariness of plea
- COA rejected voluntariness claim
- firm advice given "by those who have an accused's welfare at heart" ≠ undue coercion
- defense attorney's "honest but negative assessment of [petitioner's] chances at trial" ≠ undue coercion

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### Analysis

- colorable claim, two-step analysis
- first, performance fell below prevailing norm  
typically shown by submitting affidavits from other counsel
- second, prejudice resulted  
reasonable probability of different outcome

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### ***Fitzgerald v. Myers (State, RPI)***

#### Old Rule 32.5 Contents of a Petition

The petition shall be accompanied by a declaration by the defendant stating under penalty of perjury that the information contained is true to the best of the defendant's knowledge and belief.

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### ***Fitzgerald v. Myers***

#### New Rule 32.5 Contents of a Petition for Post-Conviction Relief

(c) Declaration. A petition by a *self-represented defendant* must include a declaration stating under penalty of perjury that the information contained in the petition is true to the best of the defendant's knowledge and belief.

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***State v. Chavez***

Keep an eye on  
this one

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***State v. Martinez***

**Rule 32.8 Evidentiary Hearing**  
**(a) Rights Attendant to the Hearing. The**  
**defendant is entitled to a hearing to**  
**determine issues of material fact . . . .**

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***Martinez—facts and procedural history***

- competency determination before plea
- Martinez found competent, pleaded to several felonies
- later filed a PCR petition alleging that:
  - he was incompetent at the time of plea, and
  - his counsel was ineffective not reinvestigating
- petition report: Martinez likely incompetent at plea
- trial court summarily dismissed petition
- COA denied review

**Decision order: colorable claim, remanded**

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**New Rules of Criminal Procedure**

**Rule 39(a)(2) & 39(b)(10): identifying and location information**

**Rule 39(b)(9): facility dog**

**Rule 39(d)(4): victim's counsel**

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**QUESTIONS?**

**The Honorable John E. Hudson,  
Gilbert Municipal Court**

**Gary Shupe  
Phoenix City Prosecutor's Office**

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